

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL NO. 04-10317-RCL
)
 ANDREW LEWIS)

DEFENDANT'S MOTION IN LIMINE TO ADMIT
ADMISSION OF PARTY-OPPONENT

Defendant, Andrew Lewis, moves that the following statement by the Solicitor General of the United States be admitted into evidence as an admission of a party-opponent. See Fed. R. Evid. 801(d)(2):

It is possible to produce computer images that are virtually indistinguishable from images of real minors engaged in sexually explicit conduct.

As reason therefore, defendant states that in order to convict the jury must find that the images at issue depict real minors. United States v. Hilton, 386 F.3d 13, 18 (1st Cir. 2004) (en banc) (government must prove that an image depicts actual children to sustain child pornography conviction). The proffered statement was made by the Office of the Solicitor General of the United States in arguing its position in Free Speech Coalition v. Ashcroft, 535 U.S. 234, 254 (2002) (explicitly noting government argument). See Free Speech Coalition v. Ashcroft, Reply Brief for Petitioners, 2000 U.S. Briefs 795, 7-8 (U.S. S. Ct. Briefs 2001) (noting that current technology provides the ability to

create virtual child pornography that is indistinguishable from that using real minors). The Office of the Solicitor General's statement is admissible as a statement by a party opponent because it was made on behalf of the Department of Justice. United States v. Kattar, 840 F.2d 118, 130-31 (1st Cir. 1988) (in criminal cases, DoJ is party-opponent for the purposes of Fed. R. Evid. 801(d)(2)).

The statement must therefore be admitted.

ANDREW LEWIS
By His Attorney,

/s/ Timothy G. Watkins
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CERTIFICATE OF SERVICE

I, Timothy G. Watkins, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on April 17, 2006.

/s/ Timothy G. Watkins
Timothy G. Watkins